REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action mailed on January 24, 2006, with a Request for Continued Examination. Claims 28-36, 55 and 56 are pending. Claims 28, 55 and 56 have been amended. Claims 57-67 have been added. No new matter has been added.

Specification

The specification has been amended to update the priority claim at the first paragraph to provide the status of U.S. Patent Application No. 09/746,447. Incorporation by reference of U.S. Patent Application Nos. 09/746,447 and 09/375,840 are relied on only to establish priority.

The material being inserted is the material previously incorporated by reference and the amendment contains no new matter.

Claim Rejections - 35 U.S.C. § 103

The Examiner rejected claims 28, 32, 33, 35, 36, 55 and 56 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,505,344 ("Woods") in view of U.S. Patent No. 4,472,201 ("Ochi") and U.S. Patent No. 5,914,196 ("Calvo"). The Examiner also rejected claim 29 under 35 U.S.C. § 103(a) as being obvious over Woods in view of Ochi, Calvo, and U.S. Patent No. 4,450,253 ("Suk"), and as being obvious over Woods in view of Ochi, Calvo, and U.S. Patent No. 5,500,456 ("Hughett"). The Examiner also rejected claim 34 under 35 U.S.C. § 103(a) as being obvious over Woods in view of Ochi, Calvo, and U.S. Patent No. 4,005,038 ("Minkoff"). The Applicant respectfully disagrees for the following reasons.

The Applicant respectfully submits that none of the references teach or suggest an aggregate used in a sprayable composition that is able to maintain integrity in the presence of VOC propellants. Unlike the materials conventionally used in aggregates, such as polystyrene or styrene, which are known to degrade in the presence of VOC propellants, rubber particulates do not degrade.

The present application teaches that using polyethylene in the aggregate in an acoustic spray material allows VOC propellants to be used as the polyethylene does not decompose as expected of other similar aggregates, *e.g.*, polystyrene. The present invention is generally

directed to an aerosol surface texture material that can be sprayed from an air-tight container onto drywall or other supporting surfaces to patch acoustic ceiling areas. The acoustic texture is provided by the aggregate in the material composition. Specification page 7, lines 6-8. The present invention teaches that, unlike other similar aggregates such as STYROFOAM, polyethylene particulates may be used with VOC propellants without melting or deterioration. Specification page 9, lines 1-13. Thus, while STYROFOAM cannot be used in the presence of VOC propellants to produce acoustic patching, polyethylene which shares similar qualities with polyethylene particulates can be used with VOC propellants. Specification page 4, lines 5-8.

The fact that the polyethylene particulates do not decompose in the presence of VOC propellants is significant because VOC propellants are preferred to non-VOC propellants. A sprayable material composition can be sprayed with less pressure when VOC propellants are used. Non-VOC propellants require an increased pressure to propel the sprayable materials. The increased pressure reduces the desired level of atomization and the level of control for the user when spraying. The increased pressure also forces the sprayable material to be dispensed all at once and too fast for a user to control. Specification page 9, lines 1-13. Neither Woods, Ochi nor Calvo teach or suggest that an aggregate comprising rubber particulates could be used instead because it does not decompose in the presence of VOC propellants. Thus, the present invention teaches that using specific aggregates comprising polyethylene particulates can be unexpectedly used in a system with VOC propellants to provide a more controllable acoustic spray and without requiring a high amount of pressure to dispense the sprayable material.

Two declarations regarding unexpected results pursuant to 37 CFR 1.132 are filed concurrently with this response regarding unexpected results.

The Applicant respectfully submits that the amended claims are not obvious over the prior art. Independent claims 28, 55 and 56 describe a hardenable flowable substance that, among other ingredients, includes an aggregate that allows the substance to be dispensed in *a more controllable* aerosol spray. Specifically, claims 28, 55 and 56 require that an aggregate used in acoustic spray materials are able to be used with VOC propellants without decomposing, and thus, because VOC propellants provide a higher level of atomization, a more controllable spray results when polyethylene is used as the aggregate. Support for the amendments may be found throughout the specification as originally presented; for example, at page 3, line 18-20;

page 4, lines 1-11; page 6, lines 14-16; page 7, lines 6-8; page 8, see Table; and page 9, lines 1-3 and 8-12.

Neither Woods, Ochi, Calvo, Suk, Hughett nor Minkoff teach, disclose or suggest that there is such a difference in how polyethylene and polystyrene are effected when exposed to VOC propellants. It was simply known in the art that aggregates used in acoustic materials such as polystyrene and the like could not maintain integrity in the presence of VOC propellants. Furthermore, none of the cited references teach, disclose or suggest an aerosol system that provides a more controllable spray.

Although the claimed aggregate quality and resulting spray control could have readily been included in any of the cited references, the fact that it was not indicates that this unexpected result was clearly not contemplated by the cited references. There is no suggestion that using the particular aggregate, when used with the claimed invention, may result in a more controllable spray due to the fact that it does not decompose in the presence of VOC propellants.

The Applicant submits that these features, which are not disclosed or taught in any of the references cited provide an unexpected advantage and/or substantial improvement such that novelty is present, thus placing amended claims 28-36 and new claims 55-67 in condition for allowance. The Applicants respectfully request that the rejections be withdrawn.

This response is being submitted within the three month deadline. In the case any fee is owed, please charge deposit account number 16-1805 (ref. 81168-306630).

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CONCLUSION

The Applicants believe that the foregoing Amendment and Remarks place this application in a condition for allowance and earnestly request a prompt action on the merits. If, however, the Examiner believes that the present application is in a condition other than for allowance, the Applicants request that the Examiner telephone the undersigned attorney at the Los Angeles telephone number (213) 488-7100, if the Examiner believes that such a telephone conference will advance prosecution.

Respectfully submitted,

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Date: 4/18/2006

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